



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

July 8, 2010

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Ms. Barbara O. Carraway
City Treasurer for the City of Chesapeake
P.O. Box 16495
Chesapeake, Virginia 23328-6495

Dear Ms. Carraway:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether the local police force can participate in the distraint¹ of property for the collection of delinquent City accounts.

Response

It is my opinion that police officers do not have the civil authority to distraint property for payments owed to the City.

Background

You note that a vehicle equipped with a license plate reader could be used to “distrain property and collect on delinquent accounts.” You describe a license plate reader as an apparatus consisting of a high-speed camera mounted on the vehicle, which is then connected to an onboard computer. The computer can run information on the captured plates against various databases. You state that because of the expense of the readers, you hoped to partner with the police department and share the costs of installing and maintaining the equipment. Because the license plate readers would be installed on police vehicles, you have asked whether the police department can be involved in the civil collection process.

Applicable Law and Discussion

Code § 58.1-3941 provides in relevant part that

Any goods or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes, levies or other charges collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector.

¹To “distrain” means “to take as a pledge property of another, and keep it until he performs his obligation” BLACK’S LAW DICTIONARY 474 (6th Ed. 1990).

Property subject to levy or distress for taxes shall be liable to levy or distress in the hands of any person for taxes, penalties and interest thereon^[2]

By statute, local police officers are vested with “all the power and authority which formerly belonged to the office of constable at common law.”³ Their chief responsibility is “the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.”⁴

The General Assembly has provided that, “a police officer shall have no authority in civil matters,”⁵ subject to four specified exceptions: (1) “execut[ing] and serving temporary detention and emergency custody orders;” (2) “serv[ing] an order of protection;” (3) executing certain warrants or summons; and (4) “deliver[ing], serv[ing], execut[ing] and enforc[ing] orders of isolation and quarantine.”⁶ Distraining civil property is a civil matter which does not fall within the plain language of the limited civil authority provided to police officers.⁷

Section 15.2-3941 does not alter this conclusion. It does not authorize police officers to distrain property. Instead, it states that “the treasurer, sheriff, constable or collector” may distrain certain property. Police officers are not “constables.” Instead, they are “invested with the power and authority which formerly belonged to the office of constable at common law” but with that broad grant of authority then being expressly limited in civil matters. Code § 1-200 provides in pertinent part that, “[t]he common law of England . . . shall continue in full force within the same, and shall be the rule of decision, except as altered by the General Assembly.”⁸ Furthermore, in interpreting statutes, “[t]he common law will not be considered altered or changed by statute *unless* the legislative intent is plainly manifested.”⁹ The General Assembly plainly manifested that intent by providing that police officers have “no authority in civil matters” except in the specified situations.¹⁰ Distraining property is not one of the specified exceptions.

²VA. CODE ANN. § 15.2-3941(A) (2008).

³Section 15.2-1704(A) (2008).

⁴*Id.*

⁵Section 15.2-1704(B) (2008).

⁶*Id.*

⁷The words and phrases in a statute should be given their ordinary meaning unless a different intention is obvious. *See Smith v. Commonwealth*, 26 Va. App. 620, 625, 496 S.E.2d 117, 119 (1998). “Where the legislature has used words of a plain and definite import the courts cannot put upon them a construction which amounts to holding the legislature did not mean what it has actually expressed.” *Id.* at 625, 496 S.E.2d at 119 (quoting *Weinberg v. Given*, 252 Va. 221, 225-26, 476 S.E.2d 502, 504 (1996)) (other citations omitted). *See also Commonwealth v. Zamani*, 256 Va. 391, 395, 507 S.E.2d 608, 609 (1998) (“The plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction.”).

⁸VA. CODE ANN. § 1-200 (2008).

⁹*Boyd v. Commonwealth*, 236 Va. 346, 349, 374 S.E.2d 301, 302 (1988) (citations omitted).

¹⁰Section 15.2-1704(B).

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Further support can be found in previous opinions by this office, which all conclude in a variety of contexts that police departments do not have specific civil authority beyond what is set forth in Code § 15.2-1704.¹¹

Conclusion

Accordingly, it is my opinion that police officers do not have the civil authority to distrain property for payments owed to the City.

With kindest regards, I am

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ken C II". The signature is stylized, with the first name "Ken" and the last name "C" followed by a Roman numeral "II".

Kenneth T. Cuccinelli, II
Attorney General

¹¹See, e.g., 2007 Op. Va. Att'y Gen. 108, 113 (noting that Code § 17.2-1504 does not appear to give police officers arrest authority for civil violations of federal immigration law); 1976-1977 Op. Va. Att'y Gen. 81, 82 (concluding that city police are expressly prohibited from serving civil process for collection of unpaid fines); 1976-77 Op. Va. Att'y Gen. 204, 205 (concluding that transfer and movement of private funds between various locations are matters of civil nature and not within duties of police officer) (these opinions were issued before the 1982 amendment to § 15.1-138, which was repealed and recodified as § 15.2-1704).